

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT DENIED
BY ISLAND COUNTY TO
WILLIAM L. MASSEY,

WILLIAM L. MASSEY,

Appellant,

v.

ISLAND COUNTY,

Respondent.

SHB No. 80-3

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from a denial of an application for a shorelines substantial development permit by Island County, came before the Shorelines Hearings Board, Nat W. Washington, Chairman (presiding), David Akana, James S. Williams, Rodney Kerslake and David Jamison, in Seattle, Washington, on April 2, 1980. The hearing resumed in Lacey, Washington, on May 21 and 22, 1980, and resumed again in Seattle, Washington, on November 24 and 25, 1980, with all

1 the above-named members in attendance, except that David Jamison was
2 not in attendance during the morning session on May 21, 1980, and
3 James S. Williams was not in attendance on November 24 and 25, 1980.

4 Appellant was represented by its attorney Christon C. Skinner.
5 Respondent was represented by deputy prosecuting attorney Allen R.
6 Hancock. Amicii Curiae, the attorney general and the Department of
7 Ecology were represented by assistant attorney general Robert V.
8 Jensen.

9 PRELIMINARY MATTERS

10 This appeal presents two ultimate issues:

11 1. Is the land proposed to be filled located within the
12 shorelines of the State, and thus subject to the Shorelines
13 Management Act (hereinafter "SMA")?

14 2. If the land is subject to the act, is the proposed development
15 consistent with the Island County Shoreline Master Program
16 (hereinafter "ICSMP") and the policy of the SMA?

17 By stipulation of the parties it was agreed that the hearing on
18 the appeal be conducted in two stages. It was agreed that the first
19 stage would deal only with issue No. 1. It was further agreed that if
20 the Board should hold that the land is subject to the SMA, that the
21 hearing would proceed to address issue No. 2.

22 The Board, after the conclusion of the first stage of the hearing,
23 having determined that the land proposed to be filled is subject to
24 the SMA, proceeded to address issue No. 2 when the hearing resumed for
25 the second stage on November 24 and 25, 1980.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 Having heard or read the testimony, having examined the exhibits,
2 having considered the pre and post hearing briefs, contentions, and
3 arguments of the parties and amicus curiae, the Shorelines Hearings
4 Board makes these

5 FINDINGS OF FACT

6 The Board adopts Findings of Fact I to X inclusive of the attached
7 Interim Findings of Fact, Conclusions of Law and Order previously
8 entered in this matter, and the same are by reference made a part
9 hereof as Findings of Fact I to IX inclusive.

10 X

11 The chief contentions of the appellant are:

- 12 1. The proposed landfill is consistent with the ICSMP.
13 2. The proposed fill have a cost or fair market value of less
14 than \$1,000 and is therefore not a substantial development as
15 defined by RCW 90.58.030(e).
16 3. The county should be estopped from contending that the area to
17 be filled is subject to the SMA and the ICSMP.

18 XI

19 The proposed fill when completed will be in excess of 10,000 cubic
20 yards and will have a total cost or fair market value in excess of
21 \$1,000. Appellant testified that he expects to fill much of Area B
22 with dredged material which persons engaged in dredging will place
23 there free of charge as means of disposing of it. We find however
24 that this is a mere expectation which may never materialize. Even if
25 a substantial portion of the fill is placed free of charge on

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 appellant's property, it will nevertheless have a fair market value in
2 excess of \$1,000. In addition a proper fill will need a substantial
3 amount of permeable material and top soil which will have a cost or
4 fair market value in excess of \$1,000. Without question the proposed
5 2.8 acre landfill will have a total cost or fair market value which
6 exceeds \$1,000 and is therefore a substantial development within the
7 meaning of RCW 90.58.030(e).

8 XII

9 It is appellant's position that the county should be estopped from
10 contending that Area B is a wetland and thus subject to the provisions
11 of the SMA and the ICSMP. The alleged estoppel is based largely on
12 Exhibit A-12, a letter written by the county planning director to the
13 appellant on August 16, 1973. The body of this short letter is set
14 forth below in its entirety.

15 In response to your letter of August 14, 1973
16 pertaining to waterfront property lying directly East
17 of the Plat of Mariner's Cove. As long as the fill
18 is placed 200 feet north of and parallel to the beach
19 and the beach area is left in its natural state, I
20 would envision no problem. Protecting the natural
21 features in this manner is, in my opinion, consistent
22 with proper shoreline management and as long as the
23 fill material to be placed adjacent thereto is
24 acceptable to the Island County Health Department, we
25 would not object. I would appreciate notification of
26 start of work, however.

27 If you have further questions, please do not
hesitate to contact me.

When the planning director wrote the letter he mistakenly believed the
line ordinary high water to be much further waterward than it is.

Relying on the letter and subsequent conversations with the

1 planning director which expressed opinions similar to those expressed
2 in the letter, the appellant, in 1973 commenced landfilling operations
3 on the land, marked in red on Exhibit A-1, which is waterward of
4 Area B. The letter of the planning director dated August 16, 1973,
5 was concerned only with the land marked in red and had nothing to do
6 with Area B which is marked in blue. The appellant continued filling
7 intermittently for about six years without objection by the county
8 planning department which was aware that the filling was taking
9 place. A relatively small amount of filling took place on Area B, but
10 it was not established that it was done in reliance on the letter or
11 any oral representations by representatives of the county. The
12 appellant expended no funds in the Area B landfilling operation and no
13 development has taken place.

14 XIII

15 Appellant plans to construct two single family residences on the
16 filled area if he is allowed to proceed. A portion of the filled area
17 may also be used for pasture.

18 XIV

19 Any Conclusion of Law which should be deemed a Finding of Fact is
20 hereby adopted as such.

21 From these Findings the Board comes to these

22 CONCLUSIONS OF LAW

23 The Board adopts Conclusions of Law I to V inclusive of the
24 attached Interim Findings of Fact, Conclusions of Law and Order
25 previously entered in this matter, and the same are by reference made

1 a part hereof as Conclusions of Law I to V inclusive.

2 VI

3 The Board found in Finding VII of the Interim Findings of Fact,
4 Conclusions of Law and Order that all of Area B except possibly a
5 small section of land in the southeasterly corner thereof is a wetland
6 or associated wetland. Therefore all of the land sought to be filled,
7 except possibly the small section in the southeasterly corner, is
8 within the shorelines of the state by virtue of being either marshland
9 in close proximity to Skagit Bay and strongly influenced thereby, or
10 by being within 200 feet of the line of ordinary high water. This
11 being the case the entire proposed landfill is subject to the SMA and
12 the ICSMP.

13 VII

14 Residential use and livestock pasturage use are not shoreline
15 (water) dependent uses since they are not dependent in fact on a
16 shoreline location and since they do not qualify as such under ICSMP
17 Use Requirements 16.21.020(L) which provides as follows:

18 WATER DEPENDENT USES: Uses which best serve the
19 general public's need for commerce and navigation,
20 and demonstrate an economic dependence for shoreline
location. (emphasis added)

21 Thus the entire landfill is prohibited outright by the mandatory terms
22 of ICSMP Use Requirements 16.21.075(B)1 which states:
23
24
25

1 Landfill shall be permitted only in conjunc-
2 tion with shoreline dependent uses."1

3 VIII

4 Appellant contends that the meaning of "shoreline dependent uses"
5 in section 16.21.075(B)1 is ambiguous and is not synonymous with the
6 term "water dependent uses" which is used in the definition set forth
7 in 16.21.020(L) above. Appellant's contention is clearly negated by
8 the wording in the definition itself. A use which can demonstrate an
9 economic dependence for shoreline location is certainly a "shoreline
10 dependent use." We hold that terms "water dependent use" and
11 "shoreline dependent use" as used by the ICSMP Use Requirements in
12 this case are synonymous. It is clear that it was intended by the
13 county commissioners of Island County that shoreline landfills be
14 permitted only for shoreline dependent commercial and navigational
15 uses and not for residential uses.

16 IX

17 A substantial portion of the land sought to be filled is marsh
18 land. Filling this land is not only prohibited by ICSMP Use
19 Requirements section 16.21.075(B)1, but also by 16.21.075(B)2 which
20 states that:

21 Landfill shall not be permitted in estuaries,
22 tidelands, marshes, ponds, swamps or similar water
23 retention areas."

24 1. ICSMP 16.21.020(B) provides:

25 "1. The word 'shall' is mandatory."

1 The boundaries of the marshland in Area B have not been clearly
2 established by the evidence. But it would serve no useful purpose to
3 remand this matter back to the county to determine these boundaries,
4 since the action of the county in denying the permit is sustained by
5 the application of 16.21.075(B)1 alone.

6 Respondent cites many other provisions of the ICSMP which it
7 contends would be violated by the proposed landfill, but in view of
8 conclusions of Law VI, VII and VIII it is not necessary to address
9 them.

10 X

11 The representation made to appellant by the county planner which
12 encouraged appellant to carry on landfilling operations on the land
13 marked in red on exhibit A-1, and the failure of county officials to
14 object to appellant's long continued landfilling activity do not estop
15 the county from denying appellant's application.

16 The requisites of an equitable estoppel are (1) an admission,
17 statement, or act inconsistent with the claim afterwards asserted, (2)
18 action by the other party on the faith of such admission, statement,
19 or act, and (3) injury to such other party from allowing the first
20 party to contradict or repudiate such admission, statement, or act.
21 Finch v. Matthews, 74 Wn.2d 161, 171, 443 P.2d 833 (1968).

22 The evidence was insufficient to establish that the landfill
23 placed on Area B was placed there in reliance on representations made
24 by county officials. It was also insufficient to establish that the
25 appellant had suffered material injury by reasons of such

1 representations. Thus appellant failed to establish the second and
2 third elements of equitable estoppel. Therefore we find it
3 unnecessary to determine whether the first element was established.

4 It is true that appellant relied on the planning director's
5 representations in filling the area marked in red on exhibit A-1, and
6 may have expended some funds in accomplishing the work, but this is
7 immaterial since this tract is not involved in the application.

8 In addition, appellant's contention is met conclusively by the
9 rule that equitable estoppel can only be applied against a
10 municipality such as Island County when "the exercise of its
11 governmental powers will not be impaired thereby." Finch, supra. The
12 purpose of the SMA and local shoreline master programs is to protect
13 the public health, safety and welfare and to provide for the
14 management of the shorelines of the state. The SMA and local master
15 programs are designed to protect the shorelines of the state "against
16 adverse effects to the public health, land and its vegetation and
17 wildlife, and the waters of the state and their aquatic life, while
18 protecting generally public rights of navigation and correlary rights
19 incidental thereto." RCW 90.58.020. Estopping Island County from
20 enforcing the SMA and its Shoreline Master Program would prevent the
21 County from accomplishing all of these governmental purposes.

XI

The denial by the Island County Board of Commissioners of appellant's application for a Shoreline Substantial Development permit should be affirmed.

XII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The denial of appellant's application for a shoreline management substantial development permit by Island County Board of Commissioners is affirmed.

DATED this 3rd day of March, 1981.

SHORELINES HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member


DAVID JAMISON, Member

JAMES S. WILLIAMS, Member


RODNEY M. KERSLAKE, Member

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STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
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BY ISLAND COUNTY TO)
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INTERIM FINDINGS OF FACT,
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AND ORDER

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1 Appellant was represented by its attorney Christon C. Skinner.
2 Respondent was represented by deputy prosecuting attorney Allen R.
3 Hancock. Amicii Curiae, the attorney general and the Department of
4 Ecology were represented by assistant attorney general Robert V.
5 Jensen.

6 PRELIMINARY MATTERS

7 This appeal presents two ultimate issues:

- 8 1. Is the land proposed to be filled located within the
9 shorelines of the State, and thus subject to the shoreline
management act?
- 10 2. If the land is subject to the act, is the proposed
11 development consistent with the Island County Shoreline
Master Program and the policy of the Shoreline Management Act?

12 By stipulation of the parties it was agreed that the hearing on
13 the appeal be conducted in two stages. It was agreed that the first
14 stage would deal only with issue No. 1. It was further agreed that if
15 the Board should hold that the land is subject to the SMA, that the
16 hearing would proceed to address issue No. 2.

17 II

18 The appellant agreed in open hearing to withdraw from his permit
19 application all that portion of the 2.8 acres of land which abuts East
20 Bay Drive and which lies within 200 feet of the ordinary high water
21 mark of the Lagoon of Mariner's Cove, and which is shown in yellow on
22 appellant's Exhibit A-1. Appellant contends that this narrow strip of
23 land is the only portion of the 2.8 acres (hereinafter referred to as
24 "area B") which is a part of the shorelines of the State of Washington.

25 III

26 These interim Findings of Fact, Conclusions of Law and Order

27 INTERIM FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 address only issue No. 1. The Final Findings of Fact, Conclusions of
2 Law and Order which will be rendered after the conclusion of Stage 2
3 will cover issue No. 2 and in addition will include these preliminary
4 Findings of Fact, Conclusions of Law and Order relating to issue No. 1.

5 Having heard or read the testimony, having examined the exhibits,
6 having considered the pre and post hearing briefs, contentions, and
7 arguments of the parties and amicii curiae, the Shorelines Hearings
8 Board makes these

9 FINDINGS OF FACT

10 I

11 The appellant applied to Island County for a substantial
12 development permit to fill approximately 2.8 acres of land to allow
13 construction of two single-family residences on property owned by him
14 and located on the North side of East Beach Drive at Mariner's Cove on
15 Strawberry Point within the Northeast one-quarter of Section 2,
16 Township 32 North, Range 2 East, W.M., Whidbey Island, Island County,
17 Washington. The permit was denied and appellant filed a timely
18 request for review.

19 II

20 The 2.8 acres of land under consideration here is identified as
21 Area B on respondent's Exhibits R-7, R-8 and R-17, and is shown in
22 blue on appellant's Exhibit A-1.

23 III

24 Appellant's expert witness, Wolf Bauer, located the ordinary high
25 water mark along Skagit Bay in front of Area B and marked it along the
line of vegetation on Exhibit R-12 with a red line. Respondent's

expert witness, Bruce T. Smith, a planner for Island County, located the line of vegetation along Skagit Bay in front of Area B very close to where Mr. Bauer located it. We find that the ordinary high water mark is where Mr. Bauer drew the red line on Exhibit R-12.

On Exhibit R-12 one inch equals 50 feet. Measurement utilizing this scale clearly shows that a large portion of Area B lies within 200 feet of the ordinary high water mark.

IV

Area B is located within the boundaries of what was once a marshy lagoon which had direct tidal connection with Skagit Bay. In time, due to infilling of silt and sand, the Area B section of the lagoon lost its surface tidal connection with Skagit Bay and became merely a salt marsh with some bog characteristics. It will be referred to hereinafter simply as a marsh.

In the early 1900's a substantial part of Area B was diked and portions of it were utilized for agricultural purposes, however, it has not been so used for many years.

V

In the 1960's the southeasterly portion of the lagoon was developed into residential lots with dredged channels to provide moorage facilities. Two streets, East Beach Drive and North Beach Drive, constructed as a part of the development, were built on fills which sealed off the marsh in Area B from a direct tidal connection with Skagit Bay. To provide drainage from Area B into the channels of Mariner's Cove Lagoon, the appellant caused a 24 inch culvert to be constructed under East Bay Drive. The culvert failed in its purpose and during periods of high tide allowed the water of Skagit Bay to

1 flood the marsh. The culvert is now sealed. It no longer performs
2 its drainage function and no longer acts as a conduit for tidal flow
3 into Area B.

4 VI

5 We find that the marsh land of Area B is strongly influenced by
6 Skagit Bay and its salt water.

7 The protective berm is periodically overtopped allowing the area
8 to be flooded by salt water from Skagit Bay when high southerly winds,
9 extremely high tide and very low barometric pressure conditions
10 coincide. Overtopping which resulted in flooding most of the land in
11 Area B occurred in 1977, 1978 and 1979. Once flooded it takes a
12 substantial period of time for the salt water to drain away. In 1978,
13 it took about six weeks for drainage to take place.

14 The soil of the marsh section of Area B is highly saline. This is
15 evidenced by soil samples collected by respondent's expert witness,
16 William Aresmeyer in March of 1980. The soil sample from test site
17 No. 1 measured 10,000+ milliohms, while the sample from test site No. 2
18 measured 11,000+ milliohms.

19 That the soil of the marsh land is highly saline is convincingly
20 and practically demonstrated by the strong presence of plants in March
21 of 1980 which are found only in tidal or salt water marshes or bogs.
22 Distichlis spicata (saltgrass) which is only found in such an
23 environment had a coverage of more than fifty percent of the total
24 marsh area. Ayrostes langlilgula (pacific bent-grass) which is
25 confined to saline bogs and marshes had a coverage of about fifteen
percent of the area. Carex phyllormanica (coastal stelletta sedge)

1 which is restricted to salt marshes and swamps was widely spread
2 through the area with a coverage of about fifteen percent. Numerous
3 other plants including some which grow in both fresh and salt water
4 environments were present with the above named plants in the coverage
5 areas. The salt water necessary for the growth of these plants comes
6 from flooding, from windblown salt spray and from salt water intrusion
7 from Skagit Bay through the permeable subsoil.

8 Springs located north of Area A as shown by Exhibits R-7, R-8 and
9 R-17, and drainage from surrounding land provide fresh water for a
10 small fresh water marsh area in the westerly portion of Area A (shown
11 in green on Exhibit A-1) and serve to dilute somewhat the saline
12 character of the salt marsh. The fact that the marsh remains saline
13 enough to produce plants found only in a salt marsh environment, even
14 though the area is well supplied with fresh water, serves to emphasize
15 that the influence by Skagit Bay and its salt water on the marsh is
16 strong. If it were not strong the marsh could not maintain its saline
17 character in the face of this incoming fresh water supply.

18 The rise and fall of the tide in Mariner's Lagoon strongly
19 influences the drainage of the marsh land of Area B. This is
20 demonstrated by the fact that it was necessary to install a one way
21 valve in the culvert which was installed under East Beach Drive to
22 facilitate drainage. The one way valve was necessary in order to
23 prevent an inflow of salt water into the marsh during high tides. The
24 valve did not work so it was closed. The closure seriously impedes
25 the drainage of the marsh. Were the marsh not hydraulically
26 influenced by the tidal action of Mariner's Cove there would be no
27

1 need to keep the culvert closed to prevent the inflow of salt water.

2 VII

3 All of Area B except for a small section in the southeasterly
4 corner is wetland or associated wetland, because it is either marsh
5 land in close proximity to Skagit Bay and strongly influenced thereby,
6 or it is within 200 feet of the line of ordinary high water.

7 The evidence leaves unanswered whether the small section of land
8 in the southeasterly corner of Area B lying southerly of the northerly
9 margin of the new fill shown on Exhibit R-15 and R-17, is wetland.
10 For this reason we make no Finding regarding this small section of
11 Area B.

12 VIII

13 In its Findings of Fact, Conclusions of Law and Order dated
14 October 9, 1979, which was promulgated in connection with appellant's
15 application for a substantial development permit, the Island County
16 planning commission determined that Area B ". . . is within Skagit Bay
17 and/or its associated wetlands . . ."

18 IX

19 As shown by Exhibit R-1 all of Area B has been designated by the
20 Department of Ecology as a wetland or a associated wetland area under
21 the provisions of RCW 90.58.030(2)(f) and chapter 173-32 WAC.
22 However, the preceding Findings of Fact are based on independent
23 evidence and on the criteria set forth in RCW 90.58.030(2)(f) and WAC
24 173-22-040, and do not depend in any way on Exhibit R-1. The
25 independent evidence in this matter does confirm that a substantial

1 area of associated wet land does exist in the area designated as such
2 on Exhibit R-1.

3 X

4 Any Conclusion of Law which should be deemed a Finding of Fact is
5 hereby adopted as such.

6 From these Findings the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 The Conclusions of Law which flow from the foregoing Findings of
10 Fact are governed by the following statutory provisions and
11 regulations RCW 90.58.030(2)(b) & (f), WAC 173-22-030(2) and WAC
12 173-22-040(3) (see Appendix A for full text).

13 II

14 Substantial portions of Area B, in addition to the area shown in
15 yellow on Exhibit A-1, are located within 200 feet of the ordinary
16 high water mark of Skagit Bay and are wetlands within the purview of
17 RCW 90.58.030(2)(b) and (f).

18 III

19 Appellant strongly maintains that only those marsh and bog lands
20 in Area B which are within a distance of 200 feet from the ordinary
21 high water mark may be classified as associated wetlands under RCW
22 90.58.030(2)(f)

23 We conclude as a matter of law, however, that contiguous bog and
24 marsh lands, whose nearest margins are in close proximity, but further
25 than 200 feet from the ordinary high water mark, are associated
26 wetlands within the purview of RCW 90.58.030(2) if they are strongly
27

1 influenced by a body of water subject to the provisions of chapter
2 90.58 RCW. (Skagit Bay and Mariner's Cove are subject to chapter 90.58
3 RCW.)

4 IV

5 Substantial portions of Area B are marsh lands which are in close
6 proximity to Skagit Bay and Mariner's Cove and are strongly influenced
7 thereby, consequently they are associated wetlands within the purview
8 of RCW 90.58.030(2)(f), WAC 173-22-030(2) and WAC 173-22-040(3).

9 V

10 All of Area B except possibly a very small section in the
11 southeasterly corner is included as a part of the shorelines of the
12 State within the purview of chapter 90.58 RCW, therefore, the Board of
13 County Commissioners of Island County had jurisdiction under chapter
14 90.58 RCW to consider and deny appellant's application for a
15 substantial development permit and this Board has jurisdiction to
16 consider and render a decision on appellant's request for review.

17 VI

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

20 From these Conclusions the Board enters this
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INTERIM ORDER

That the hearing on this matter be reconvened as soon as practical for the purpose of considering issued No. 2 and determining whether appellant's proposed project is consistent with the Island County shoreline master program and the policy of the shorelines management act.

DONE at Lacey, Washington, this 8th day of August, 1980.


SHORELINES HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member


DAVID JAMISON, Member


JAMES S. WILLIAMS, Member


RODNEY S. KERSLAKE, Member

INTERIM FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

APPENDIX A

1. RCW 90.58.030(2)(b) and (f) read as follows:

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971 or as it may naturally change thereafter: Provided, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: Provided, That any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

2. WAC 173-22-030(2) reads as follows:

(2) "Associated wetlands" means those wetlands which are strongly influenced by and in close proximity to any stream, river, lake, or tidal water, or combination thereof, subject to chapter 90.58 RCW.

3. WAC 173-22-040(3)(b) and (c) read as follows:

(3) Marshes, bogs and swamps. If marshes, bogs and swamps which constitute associated wetlands extend more than two hundred feet beyond the ordinary high water mark of the body of water with which they are associated, their perimeters shall be the outer limit of the wetland designation. Such marshes, bogs and swamps shall be defined and designated according, but not limited to, the following definitions contained in Peat Resources of Washington, Bulletin No. 44, department of conservation, (1958):

(a) Marsh - A low flat area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage, and other aquatic or semi-aquatic plant. Shallow water usually stands on a marsh, at least during a considerable part of the year. The surface is commonly soft mud or muck, and no peat is present.

(b) Bog - A depression or other undrained or poorly drained area containing, or covered with, peat (usually more than one layer) on which characteristic kinds of sedges, reeds, rushes, mosses, and other similar plants grow. In the early stages of development the vegetation is herbaceous and the peat is very wet. In middle stages the dominant vegetation is brush. In mature stages trees are usually the dominant vegetation, and the peat, at least near the surface, may be comparatively dry.